Liow Tow Thong & Ors v Pentadbir Tanah Alor Gajah & Ors

HIGH COURT (MELAKA) — ORIGINATING MOTION NO 25-24 OF 1993
AUGUSTINE PAUL JC
21 AUGUST 1996

Land Law *— Land Administrator's right of way — Creation — Alternative routes available — Application for right of way was anchored on convenience without a consideration of other relevant circumstances — Whether land administrator ought to have granted right of way — National Land Code 1965 s 390*

Land Law *— Land Administrator's right of way — Creation — Whether right of way under s 390 of the National Land Code 1965 could be granted in favour of a person who did not apply for that right — National Land Code 1965 s 390*

Originally, the second to fourteenth defendants ('the defendants') had two rights of way from their lands. One was through Lot 419 which belonged to the plaintiffs, while the other was through lands belonging to the defendants and third parties. The second right of way was subsequently closed to the defendants. Thus, the defendants made an application to the land administrator ('the first defendant') under s 390 of the National Land Code 1965 ('the NLC') for an order of a right of way over Lot 419. It was established that the right of way over Lot 419 was closer to the main road and more convenient. Two inquiries were held, the first by an officer of the land office and another by the first defendant. Oral statements were taken and based on these inquiries, the first defendant made an order for a right of way through the plaintiff's land for the benefit of the defendants and other neighbouring landowners. No reasons were given for the decision. The plaintiffs appealed.

Held, allowing the appeal:

(1) It is settled law that where there is an alternative right of way available, the land administrator must take that fact into consideration. The authorities indicate in crystalline terms that the grant of a right of a way, when another one already exists, though less convenient, is a wrongful exercise of discretion. Since the defendants only elected to proceed against the plaintiffs, it was manifestly patent that the creation of that right of way was anchored on convenience without a consideration of other relevant circumstances. This was a violation of s 390(3) of the NLC (see p 85G–I); *Liew Peck Lian & Ors v The Conservator of Forests, Johore* [1961] MLJ 117, *Si Rusa Inn Sdn Bhd & Ors v Collector of Land Revenue, Port Dickson & Ors* [1987] 1 MLJ 147 and *Vadivelu a/l Palanisamy v M Radhakrishnan* [1966] 1 CLJ 224 followed.

(2) The language of s 390 of the NLC only permits the creation of a private right of way in favour of a person who applies for that right. Where other persons wish to share a right of way which has already been granted then they should proceed through s 394 of

the NLC. In this case, the order granted by the land administrator was made not only for the benefit of the defendants but also for neighbouring landowners. As a result, the first defendant, in the order made under s 390 had also incorporated a right of way under s 394 of the NLC which he was not permitted to do as it was not before him for adjudication (see pp 86E–I and 87A–C).

(3) The procedure followed by the first defendant in arriving at his decision was irregular. This was because, as the first inquiry involved oral statement, there should not be a change of personnel during the second inquiry (see p 87D–H); *Pettitt v South Australian Tattersall's Club* (1930) SASR 258 followed.

(4) As the reasons for the decision made by the land administrator were not available before the court, the court was precluded from reviewing the rationale of the decision. The reasons for the decision are necessary in a case where there is a right of appeal since an appeal is merely a continuation of proceedings by way of rehearing and litigants as well as the appellate tribunal are entitled to know the reasons for the findings (see p 88D–E); *General Electric Co Ltd v Price Commission* [1975] 1 CR 1; *Hong Leong Equipment Sdn Bhd v Liew Fook Chuan and another appeal* [1996] 1 MLJ 481; *Rohana bte Ariffin & Anor v Universiti Sains Malaysia* [1989] 1 MLJ 487 and *Koltex Hosiery (Australia) Pty Ltd v Commissioners of Taxation* (1975) 132 CLR 535 followed.

[Bahasa Malaysia summary

Pada asalnya, defendan kedua hingga keempat belas ('defendan-defendan') mempunyai dua hak lalu-lalang daripada hartanah mereka. Satu adalah melalui Lot 419 yang dimiliki oleh plaintif-plaintif, manakala yang satu lagi adalah melalui tanah kepunyaan defendan-defendan dan pihak ketiga. Hak lalu-lalang yang kedua kemudiannya tertutup kepada defendan-defendan. Justeru itu, defendan-defendan membuat satu permohonan kepada pentadbir tanah ('defendan pertama') di bawah s 390 Kanun Tanah Negara 1965 ('KTN') untuk satu perintah hak lalu-lalang ke atas Lot 419. Ia dibuktikan bahawa hak lalu-lalang ke atas Lot 419 adalah lebih dekat kepada jalan utama dan lebih memudahkan. Dua siasatan telah dijalankan, yang pertama oleh seorang pegawai pejabat tanah dan yang satu lagi oleh defendan pertama. Pernyataan lisan telah diambil dan berdasarkan siasatan-siasatan ini, defendan pertama telah membuat perintah hak lalu-lalang melalui tanah plaintif untuk manfaat defendan-defendan dan tuan punya hartanah bersebelahan yang lain. Tiada alasan telah diberikan untuk keputusan itu. Plaintif-plaintif merayu.

Diputuskan, membenarkan rayuan:

(1) Adalah undang-undang mantap bahawa di mana terdapat satu laluan hak lalu-lalang alternatif, pentadbir tanah mestilah mengambil kira fakta tersebut dalam pertimbangannya. Autoriti-autoriti menunjukkan secara jelasnya bahawa membenarkan hak

A lalu-lalang apabila satu laluan lain sudah wujud, tetapi yang tidak begitu memudahkan, adalah satu kesilapan pelaksanaan budi bicara. Memandangkan defendan-defendan hanya memilih untuk bertindak terhadap plaintif-plaintif, ianya amat ketara bahawa perwujudan hak lalu-lalang tersebut adalah berasaskan kemudahan tanpa mempertimbangkan keadaan-keadaan relevan B yang lain. Ini adalah satu pelanggaran s 390(3) KTN (lihat ms 85G–I); *Liew Peck Lian & Ors v The Conservator of Forests, Johore* [1961] MLJ 117, *Si Rusa Inn Sdn Bhd & Ors v Collector of Land Revenue, Port Dickson & Ors* [1987] 1 MLJ 147 dan *Vadivelu a/l Palanisamy v M Radhakrishnan* [1966] 1 CLJ 224 diikut.

C (2) Bahasa dalam s 390 KTN hanya membenarkan perwujudan hak lalu-lalang persendirian yang memihak kepada seseorang yang memohon untuk hak tersebut. Sekiranya orang lain inginkan bahagian di dalam sesuatu hak lalu-lalang yang telah pun diberikan maka mereka patut memulakan prosiding di bawah s 394 KTN. D Dalam kes ini, perintah yang diberikan oleh pentadbir tanah telah dibuat bukan sahaja untuk manfaat defendan-defendan tetapi juga untuk tuan punya hartanah yang bersebelahan. Oleh sebab itu, defendan pertama dalam perintah yang dibuat di bawah s 390 juga telah memasukkan satu hak lalu-lalang di bawah s 394 KTN yang mana beliau tidak mempunyai hak E berbuat demikian kerana perkara tersebut tidak berada di hadapan beliau untuk keputusan (lihat ms 86E–I dan 87A–C).

(3) Prosedur yang diikuti oleh defendan pertama dalam mencapai keputusannya adalah luar aturan. Ini adalah kerana memandangkan siasatan pertama melibatkan pernyataan lisan, F adalah tidak wajar berlakunya satu perubahan kakitangan semasa siasatan kedua (lihat ms 87D–H); *Pettitt v South Australian Tattersall's Club* (1930) SASR 2588 diikut.

(4) Memandangkan alasan-alasan bagi keputusan pentadbir tanah tidak terdapat di hadapan mahkamah, mahkamah telah dihalang G dari mengkaji semula rasional keputusan tersebut. Alasan-alasan untuk sesuatu keputusan adalah diperlukan dalam suatu kes di mana terdapat satu hak rayuan dibuat daripada keputusan itu kerana rayuan hanyalah satu sambungan prosiding dalam bentuk pendengaran semula dan litigan-litigan serta tribunal rayuan adalah berhak mengetahui alasan-alasan bagi keputusan tersebut H (lihat ms 88D–E); *General Electric Co Ltd v Price Commission* [1975] 1 CR 1; *Hong Leong Equipment Sdn Bhd v Liew Fook Chuan and another appeal* [1996] 1 MLJ 481; *Rohana bte Ariffin & Anor v Universiti Sains Malaysia* [1989] 1 MLJ 487 dan *Koltex Hosiery (Australia) Pty Ltd v Commissioners of Taxation* (1975) 132 CLR 535 diikut.] I

Notes

For cases on the land administrator's right of way, see 8 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 1897–1898.

Cases referred to

Avon Dixon Pty Ltd v Commissioner of Taxation (1949) 78 CLR 353 (refd)
General Electric Co Ltd v Price Commission [1975] 1 CR 1 (follld)
Liew Peck Lian & Ors v The Conservator of Forests, Johore [1961] MLJ 117 (follld)
Koltex Hosiery (Australia) Pty Ltd v Commissioners of Taxation (1975) 132 CLR 535 (follld)
Perpetual Executors Trustees & Agency Co (WA) Ltd v Commissioner of Taxation (1935) 3 ATD 132 (refd)
Pettitt v South Australian Tattersall's Club (1930) SASR 258 (follld)
R v Sevenoaks DC, ex p Terry [1985] 3 All ER 226 (refd)
Rohana bte Ariffin & Anor v Universiti Sains Malaysia [1989] 1 MLJ 487 (follld)
Si Rusa Inn Sdn Bhd & Ors v Collector of Land Revenue, Port Dickson & Ors [1987] 1 MLJ 147 (follld)
Vadivelu a/l Palanisamy v M Radhakrishnan [1966] 1 CLJ 224 (follld)

Legislation referred to

National Land Code 1965 ss 390, 390(2), 390(3), 391, 394, 395, 418

Hazlina Mohd Khalid (*Koh Kim Leng & Co*) for the plaintiff.
Anselm Fernandez (Deputy Public Prosecutor) for the first defendant.
Ng Ai Hoon (*Ng Goh & Co*) for the second to fourteenth defendants.

Augustine Paul JC: This is an appeal under s 418 of the National Land Code 1965 by the plaintiffs against an order made by the Land Administrator, Alor Gajah ('the first defendant') creating a private right of way over Lot 419 Mukim Lendu, Daerah Alor Gajah, Melaka of which they are the registered proprietors for the benefit of the second to the fourteenth defendants ('the defendants'), the registered proprietors of Lot Nos 596, 1361, 1362, 1363, 1364, 1365, 1369, 1370, 1371, 1372 and 1382 Mukim Lendu, Daerah Alor Gajah, Melaka. Lots 596, 1363 and 1362 belonging to the defendants adjoin Lot 419, the plaintiffs' property. The rest of the defendants' plots adjoin the three lots just described. The National Land Code 1965 shall hereinafter be referred to as 'the NLC'.

Upon receiving Form 28A dated 14 April 1993 from the defendants as prescribed by s 390 of the NLC, the first defendant conducted the necessary inquiries. He then made the order against which the plaintiffs now appeal by way of a motion. The order is in the following terms:

> Perintah Pentadbir Tanah Alor Gajah
>
> 1.1 Satu jalan keluar masuk selebar 20 kaki diwujudkan melalui Lot 419, 596, 1361, 1362, 1372, 1371, 1363, 1370, 1364, 1369, 1365 dan 1368 Mukim Lendu seperti yang ditunjukkan dalam pelan tanah berkembar. Jalan ini adalah bagi kemudahan keluar masuk untuk tuan-tuan tanah yang dinyatakan di atas serta lain-lain lot yang berhampiran.

A 1.2 Jalan keluar masuk ini akan dibina oleh pemohon-pemohon dengan kos pembinaan ditanggung oleh pemohon-pemohon sendiri.

1.3 Jalan keluar masuk ini akan digunakan oleh orang-orang yang berjalan kaki, kenderaan serta haiwan.

1.4 Tuan-tuan tanah yang terlibat dengan jalan keluar masuk ini tidak dibenarkan membuat apa-apa halangan terhadap jalan tersebut.

B Jika dibuat demikian, tindakan perundangan akan diambil ke atas mereka yang berkenaan.

1.5 Pemohon-pemohon adalah dikehendaki membuat bayaran pampasan bagi tanaman-tanaman yang terlibat di atas tanah Lot 419 serta lain-lain tuntutan seperti berikut:

C

(i) 8 batang pokok kelapa sawit (8 x RM80)	=	RM	640.00
(ii) 7 batang pokok durian (7 x RM68)	=	RM	476.00
(iii) Pokok-pokok pisang	=	RM	100.00
(iv) Gangguan perniagaan kerana hadir siasatan	=	RM	1,200.00
		RM	2,416.00

D

(Ringgit Malaysia: Dua Ribu Empat Ratus Enam Belas Sahaja)

E Bayaran pampasan hendaklah dibuat melalui pejabat ini dalam tempoh dua minggu daripada tarikh surat ini.

1.6 Pemohon-pemohon dikehendaki membuat jalan keluar masuk ini dalam tempoh satu bulan daripada tarikh perintah ini dikeluarkan. Jika gagal berbuat demikian, maka perwujudan jalan ini akan dibatalkan oleh Pentadbir Tanah Alor Gajah.

F 1.7 Pemohon-pemohon hendaklah membayar kos bayaran ukur yang akan ditetapkan oleh Jabatan Ukur bagi perwujudan jalan keluar masuk ini.

Tuan-Puan diminta bermufakat bersama-sama untuk menentukan cara pembayaran pampasan seperti yang dinyatakan tersebut.

G From the affidavits affirmed by the plaintiffs (encl No 1), the first defendant (encl No 6) and the defendants (encl No 20), it is clear that the defendants' properties are landlocked. Originally, they had two rights of way from their land, that is to say, one through Lot 419 and the other through Lots 1382, 1381 and 1389. With regard to the second right of way, Lot 1382 belongs to the defendants while the other two lots belong to some other persons. H As the owners of these two lots had developed their properties, they closed the right of way which had previously been enjoyed by the defendants. It must be observed that the right of way that the defendants had over Lot 419 was closer to the main road and more convenient. The defendants' reason for claiming the right of way over Lot 419 can be gathered from I para 7 of their affidavit where they affirmed that:

> Oleh kerana tanah-tanah kami tidak ada jalan keluar, kami memohon satu jalan yang berhampiran sekali ke tanah kami dan ke jalanraya.

It would appear that the first defendant took only that factor into consideration in making the order in favour of the defendants. Section 390 of the NLC under which the first defendant made the order reads as follows:

> (1) The State Authority or the proprietor or occupier of any alienated country land may apply to the Land Administrator in Form 28A for the creation of a private right of way.
>
> (2) The Land Administrator, where —
>
> (a) he receives an application for a private right of way; or
>
> (b) he is of the opinion that the creation of a public right of way is or might be expedient,
>
> shall either hold an enquiry or make such other investigation as he thinks appropriate.
>
> (3) The Land Administrator, if on holding an enquiry or making an investigation he is satisfied that it is expedient for a private or public right of way to be created, shall make an order creating the right of way.
>
> (4) An order made under subsection (3) shall —
>
> (a) describe sufficiently for purposes of identification —
>
> (i) the land and the public terminal between which the right of way is to run; and
>
> (ii) the route of the right of way;
>
> (b) state whether or not those using the right of way may pass and re-pass with animals and vehicles; and
>
> (c) contain such conditions and limitations (if any) as the Land Administrator thinks appropriate.

The application of this section has come up for deliberation in several cases. The principles which ought to guide a land administrator in granting a right of way can be gathered from the judgment of Adams J in *Liew Peck Lian & Ors v The Conservator of Forests, Johore* [1961] MLJ 117 where he said at pp 117–118:

> He argued, therefore, that as the appellants were absolute proprietors of the land in question and had absolute right to exercise full dominion over it, what therefore the Conservator of Forests was seeking was an invasion of private rights and therefore such private rights should only be disturbed for very good and grave reasons. With that submission I agree. Before a right of way can be granted under the provisions, the collector must satisfy himself that access is not otherwise reasonably available and 'reasonably' here certainly does not mean 'conveniently'. I think it is necessary to bear this in mind. The collector must look at all the circumstances. He must consider whether the alternative routes if any are at all practical. This does not mean that they must necessarily be the cheapest, or most convenient.

The meaning of the word 'expedient' in s 390(3) came up for consideration before Peh Swee Chin J (as he then was) in *Si Rusa Inn Sdn Bhd & Ors v Collector of Land Revenue, Port Dickson & Ors* [1987] 1 MLJ 147. His Lordship said at p 152:

> The *Concise Oxford Dictionary* (5th Ed) defines the word 'expedient' as 'advantageous', 'suitable', and as a noun, it is defined as a 'contrivance' or 'device'. 'Contrivance' is defined as an act of contriving, deceitful practice, invention, etc. Therefore, when it is expedient to do something, it is

A conceivable that such action may sometimes partake of an unprincipled quality, or that such action may sometimes be contrary to principle.

Having regard to the passage cited from *Pengarah Tanah dan Galian v Sri Lempah Enterprise Sdn Bhd* [1979] 1 MLJ 135 and having regard to the ordinary dictionary meaning of the word 'expedient' which I have referred to with its connotation of acting contrary to principles (but rather than B deceit which no legislature could have intended), it is my view that when a collector is satisfied that it is expedient, it is tantamount to this, that he should then act or exercise his discretion properly and reasonably, in all cases, save in exceptional circumstances where such departure from such propriety or reasonableness can be made.

C Though it is a truism to say that land or possession of land is inviolate, it is the first principle to be borne in mind here. Any interference or invasion of it is only tolerated on impeccable grounds. Any authority that is conferred on a public official to grant a right of way against a land owner for the benefit of another has to be exercised (considering the combined effect of the passage cited from *Sri Lempah*'s case and the deliberate use of the word 'expedient' in the relevant section of the NLC) for a proper purpose and D reasonably unless exceptional circumstances exist.

And at p 153:

Next, was it reasonable in the circumstances to grant the private right of way? In *Liew Peck Lian*'s case, it was held that 'reasonably' did not mean E 'conveniently'. With respect I agree, for were it otherwise, the floodgates would definitely be opened for similar application in future; possibly made with complete abandon. There must be something more than just mere inconvenience or convenience; some situation that partakes of gravity or urgent necessity.

One of the reasons that compelled the learned judge to allow the appeal in F the *Si Rusa Inn Sdn Bhd* decision was the fact that the grantee had an alternative route though the right of way granted was shorter and more convenient. In *Vadivelu a/l Palanisamy v M Radhakrishnan* [1996] 1 CLJ 224, Abdul Hamid Embong JC (as he then was) said that the existence of alternative routes must be a factor to be taken into account by the land G administrator in deciding whether to create a right of way or not.

Thus, it is now settled law that where there is an alternative right of way available, the land administrator must take that fact into consideration. The authorities indicate in crystalline terms that the grant of a right of way, when another one already exists though less convenient, is a wrongful exercise of discretion. Of course, in the appeal before me both the rights H of way enjoyed by the defendants had been closed for use by them. However, it is common ground that the defendants elected to proceed only against the plaintiffs for the creation of a right of way as that was the most convenient route for them. The cases that I have adverted to make it manifestly patent that the creation of a right of way anchored on convenience I without a consideration of other relevant circumstances is a violation of the provisions of s 390(3) of the NLC. I do realize that the other right of way, through Lots 1381 and 1389, previously enjoyed by the defendants had been closed to them. But, in my opinion, the first defendant ought to have considered that right of way as a possible route over which the

defendants could be given a right if an application had been made for it. However, that was not done so. It is a principle of long standing that a body charged with exercising discretion in the making of decisions must not, by its own act or decision, prevent itself from exercising that discretion properly (see *R v Sevenoaks DC, ex p Terry* [1985] 3 All ER 226). The decision of a person is examinable in order to see whether he has acted according to law in arriving at that decision, that is whether he has had regard to circumstances to which he as a matter of law is entitled to have regard (see *Perpetual Executors Trustees & Agency Co (WA) Ltd v Commissioner of Taxation* (1935) 3 ATD 132). If a decision-maker does not address himself to the question which the law requires, then his conclusion is liable to review (see *Avon Dixon Pty Ltd v Commissioner of Taxation* (1949) 78 CLR 353). The defendants, too, have not advanced any reasons as to why they chose not to proceed against the proprietors of Lots 1381 and 1389 for the creation of a right of way. Accordingly, it is my view that the first defendant has failed to consider the relevant circumstances in arriving at his decision.

There were certain other features of the case which had the effect of vitiating the order made by the land administrator. I invited the parties to submit on them before making a final ruling. They had no comments to make. I shall now consider those features.

(a) *The validity of the order*

The language of s 390 of the NLC only permits the creation of a private right of way in favour of a person who applies for that right. Where other persons wish to share a right of way which has already been granted then they should proceed through s 394 of the NLC which provides as follows:

> (1) The proprietor or occupier of any alienated land, which abuts on or is in the proximity of land for the benefit of which a private right of way has been created, may apply to the Land Administrator in Form 28C to share the right of way.
>
> (2) The Land Administrator, on receiving an application under subsection (1) in respect of a right of way, shall either hold an enquiry or make such other investigation as he thinks appropriate; and, if on holding the enquiry or making the investigation he is satisfied that it is expedient for the application to be granted, he shall make an order declaring that the applicant is entitled to share in the right of way to such extent and on such conditions (including conditions as to the maintenance and repair of the right of way) as the Land Administrator thinks fit.
>
> (3) Where on an application under subsection (1) an order is made in respect of a right of way, the order may confer on the applicant such additional rights of way over any other alienated land as are reasonably necessary in the Land Administrator's opinion to make the order effective.
>
> (4) Sections 391 and 395 shall apply in relation to a right of way arising under this section as they apply in relation to a right of way arising under section 390.

A The relevant parts of the order granted by the first defendant with regard to this issue read as follows:

> 1.1 ... Jalan ini adalah bagi kemudahan keluar masuk untuk tuan-tuan tanah yang dinyatakan di atas *serta lain-lain lot yang berhampiran.*
>
> 1.3 Jalan keluar masuk ini akan digunakan oleh orang-orang yang berjalan
> B kaki, kenderaan serta haiwan. (Emphasis added.)

The words that I have emphasized show that the order made is not only for the benefit of the defendants but also for neighbouring landowners and others. In the result, the first defendant, in the order made under s 390 of the NLC for a private right of way, has also incorporated a right of way
C under s 394 of the NLC which he is not permitted to do as it was not before him for adjudication. The order as it stands is therefore detrimental to the interests of the plaintiffs and is therefore defective.

(b) *Procedure followed by the land administrator in making the order*

D Section 390(2) of the NLC requires that the land administrator shall hold an inquiry or make such other investigation as he thinks appropriate before granting a right of way. Accordingly, two inquiries were held. The first was conducted on 24 June 1993 by the Pegawai Penempatan, Pejabat Tanah dan Daerah Alor Gajah on the instructions of the Pentadbir Tanah dan Daerah Alor Gajah. This inquiry included the taking of an oral statement.
E The second was conducted on 14 August 1993 by the Pentadbir Tanah dan Daerah Alor Gajah himself who then made the order on 23 August 1993 based on both the inquires that had been conducted. Changes of personnel during a hearing should be avoided particularly when evidence is taken viva voce (see *Disciplinary Tribunals* by JRS Forbes at p 43). A
F party is entitled to be judged only by duly appointed persons who fairly consider the case as a whole. In *Pettitt v South Australian Tattersall's Club* (1930) SASR 258 the hearing was in two sessions. Early in the second session, one member of the tribunal withdrew when his impartiality was questioned and was replaced by another who had not heard the viva voce evidence of the first session. Piper J held that the ensuing decision was void
G and added at p 265:

> The committee which ultimately decides what is to be done must have heard the whole case.

Accordingly, it is my view that the procedure followed by the first defendant
H in arriving at his decision is irregular.

(c) *The need to give reasons for the decision*

The documents relied on by the parties do not contain any reason for the decision arrived at by the land administrator. A decision-maker should
I record his reasons for arriving at a decision and it should not be left to the court to draw any inference as to whether a matter was considered by him (see *Koltex Hosiery (Australia) Pty Ltd v Commissioners of Taxation* (1975) 132 CLR 535). In *Hong Leong Equipment Sdn Bhd v Liew Fook Chuan and*

another appeal [1996] 1 MLJ 481, Gopal Sri Ram JCA stressed in his enlightening judgment the need for a public decision-taker to give reasons for his decisions and said at p 538:

> The imposition of a duty upon public decision-takers to furnish reasons in cases affecting fundamental rights achieves the national aim. When a public decision-taker gives reasons, he reveals his mind and exposes for curial scrutiny the basis for his decision.
>
> Administrators will therefore be encouraged to ensure that their decisions are fair and reasonable and in keeping with both legislative policy as expressed in the relevant Act of Parliament and executive policy as declared by the elected government. Unjustified secrecy for decisions of a public nature, on the other hand, make room for suspicion, distrust and poor administration, leading to inefficiency and unwarranted allegations.

In *General Electric Co Ltd v Price Commission* [1975] 1 CR 1, Lord Denning said that if no reasons are given, the court may infer that there was no good reason for reaching the conclusion and act accordingly. In *Rohana bte Ariffin & Anor v Universiti Sains Malaysia* [1989] 1 MLJ 487, Edgar Joseph Jr J (as he then was) said that reasons for a decision are necessary in cases where there is a right of appeal since an appeal is merely a continuation of proceedings by way of rehearing and litigants as well as the appellate tribunal are entitled to know the reasons for the finding. As the reasons for the decision are not before me, I am precluded from reviewing the rationale behind the land administrator's decision.

In determining the appropriate order that I ought to make in this appeal, I took into consideration the defects made in the order by the land administrator and the irregularities in the procedure followed in consequence of which neither the plaintiff nor the defendants should be made to suffer unduly. In the premises, I allowed the appeal with costs and ordered that the matter be reheard.

Appeal allowed.

Reported by Izzaty Izzuddin